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Arraignment

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 CR 45 (RJS)

5 JERMAINE DORE, DWAYNE BARRETT,  
6 TAIJAY TODD, SHEA DOUGLAS,

7 Defendants.

-----x

8 New York, N.Y.  
9 February 20, 2013  
10 4:28 p.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15  
16 PREET BHARARA,  
17 United States Attorney for the  
18 Southern District of New York  
19 AMY LESTER  
20 JESSICA MASELLA  
21 Assistant United States Attorneys

22 JAMES ROTH  
23 Stand-In Attorney for Defendant Dore  
24 Attorney for Defendant Barrett

25 ALLISON McKENZIE  
Attorney for Defendant Todd

ZACHARY GIAMPA  
Attorney for Defendant Douglas

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1 (In open court)

2 THE LAW CLERK: This is 12 CR 45, United States V.  
3 Hussain, et al.

4 THE COURT: Can counsel just state their appearances.

5 MS. MASELLA: Good afternoon, your Honor.

6 Jessica Masella and Amy Lester for the government.

7 THE COURT: Okay. Ms. Masella, Ms. Lester, good  
8 afternoon.

9 And for the defendants, Mr. Hussain is not here,  
10 right? And his counsel requested that he be excused.

11 We have Mr. Dore.

12 MR. ROTH: Your Honor, Mr. Dore is here. I will stand  
13 up for the limited purpose of arraigning Mr. Dore.

14 THE COURT: Okay.

15 MR. ROTH: I know that Ms. Frontier's associate was  
16 unable to make it here today due to some personal medical  
17 issue. And that was communicated. And I didn't have an  
18 opportunity, because I wasn't certain it was on today, to find  
19 out exactly what her position is with respect to several other  
20 issues that may arise today. But for the limited purposes of  
21 the arraignment, I've provided a copy of the superseding  
22 arraignment to Mr. Dore, and he's prepared to enter a plea of  
23 not guilty today.

24 THE COURT: Okay. Thank you.

25 MR. ROTH: And I, of course, appear on behalf of

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1 Mr. Barrett, who's the second gentleman in.

2 THE COURT: Yes. Mr. Barrett, good afternoon.

3 Mr. Roth, you're representing Mr. Barrett, as always  
4 and then we have Mr. Todd who's here.

5 Good afternoon, Mr. Todd.

6 MS. McKENZIE: Good afternoon, your Honor.

7 Allison McKenzie from the law firm of Sullivan &  
8 Brill, standing up for Steven Brill.

9 And I also spoke to my client, Taijay Todd, with  
10 respect to the superseding indictment today. And he also  
11 enters a plea of not guilty.

12 THE COURT: Okay. Well, I'll take the formal pleading  
13 then, but good afternoon to you.

14 And Mr. Singh has pled guilty.

15 And then we have Mr. Shea.

16 This is Mr. Shea's first appearance before me.

17 THE DEFENDANT:

18 DEFENDANT SHEA: Yes.

19 THE COURT: Okay. And, counsel.

20 MR. GIAMPA: Appearing for Mr. Shea Douglas, it's  
21 Zachary Giampa, by the Law Offices of Richard L. Giampa, 860  
22 Grand Concourse, Suite 1A, Bronx, New York, for the defendant  
23 Shea Douglas.

24 Good afternoon, your Honor.

25 THE COURT: Good afternoon.

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1           Mr. Douglas, I'm sorry, I called you Mr. Shea. I  
2 apologize.

3           DEFENDANT DOUGLAS: Don't worry about it.

4           THE COURT: Good afternoon to you. And good  
5 afternoon, Mr. Giampa.

6           MR. GIAMPA: Yes, your Honor.

7           THE COURT: You've been appointed pursuant to the  
8 Criminal Justice Act or you're retained?

9           MR. GIAMPA: No, no, no, we're a privately retained  
10 law firm.

11          THE COURT: Retained. Okay.

12          All right. We're here because the government  
13 unsealed -- or asked me to unseal -- a superseding indictment  
14 that names Mr. Douglas, as well as the remaining defendants.

15          So the first thing we'll do is arraign the defendants.  
16 The other defendants have been through this before, so they  
17 know how this goes, but Mr. Douglas has not.

18          So I'll start with you, Mr. Douglas. Have you  
19 received a copy of the indictment in this case?

20          DEFENDANT DOUGLAS: Not yet.

21          THE COURT: You've not?

22          MR. GIAMPA: Your Honor, I just got a copy of the  
23 indictment about one minute before you walked in the door. I  
24 have it here if you --

25          THE COURT: Oh, all right.

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1 Mr. Douglas was presented yesterday, wasn't he?

2 MR. GIAMPA: Yes, he was. He was presented with a CJA  
3 attorney. I was on trial; I was unable to be there.

4 I did show up later that night, but he had already  
5 been -- not arraigned, but he had already been presented.

6 Now, I have spoken with Mr. Douglas prior to our court  
7 appearance today, just prior -- I've just spent the last two  
8 hours with him. I have gone over the indictment, but he does  
9 not have a copy in his possession.

10 THE COURT: But prior to coming out here now, did you  
11 have a chance to read the indictment with Mr. Giampa?

12 DEFENDANT DOUGLAS: I haven't read it thoroughly, but  
13 we went over it thought, most of it.

14 THE COURT: Do you want to take a minute so you can  
15 read it? Why don't we do that. I think that's appropriate.

16 Marshal, is that okay if we give Mr. Douglas a copy of  
17 the indictment?

18 Mr. Giampa, why don't you give it to Mr. Douglas;  
19 Mr. Douglas can read it. If you need to confer, I'll give you  
20 that opportunity. But, in the meantime, I'll arraign the other  
21 defendants on this new superseding indictment.

22 Before I do that, Ms. Masella, what is new about this  
23 indictment other than it lists Mr. Douglas?

24 MS. MASELLA: That's it, your Honor. Mr. Douglas is  
25 added into Counts One and Two, and numerous overt acts in Count

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1 One. It does not change the charges at all with respect to the  
2 remaining defendants.

3 THE COURT: All right.

4 So then let's start with Mr. Dore.

5 Mr. Dore, have you seen a copy of this superseding  
6 indictment?

7 You have to say yes or no, just so the court reporter  
8 can get it.

9 DEFENDANT DORE: Yes, sir.

10 THE COURT: Yes.

11 And you had a chance to discuss it with your attorney  
12 or, in this case, Mr. Roth, who's standing in for your  
13 attorney?

14 DEFENDANT DORE: Yeah.

15 THE COURT: Would you like me to read it out loud?

16 DEFENDANT DORE: No.

17 THE COURT: Or do you waive the public reading?

18 DEFENDANT DORE: No, I'm good.

19 THE COURT: You're good. You waive the public  
20 reading.

21 DEFENDANT DORE: Yeah.

22 THE COURT: Do you have any questions about it, the  
23 indictment?

24 DEFENDANT DORE: No, I take at my lawyer.

25 THE COURT: Do you plead guilty or not guilty to the

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1 charges in the indictment?

2 DEFENDANT DORE: Not guilty.

3 THE COURT: Not guilty. Okay. Thank you.

4 All right. Mr. Barrett.

5 Mr. Barrett, have you seen a copy of the superseding  
6 indictment?

7 DEFENDANT BARRETT: I seen a copy of the paper handed  
8 to me.

9 THE COURT: I'm sorry, I didn't hear you.

10 DEFENDANT BARRETT: I seen a copy of the paper handed  
11 to me. I don't know what it is.

12 THE COURT: Have you had a chance to read it?

13 DEFENDANT BARRETT: Says the same thing --

14 THE COURT: That's what they say.

15 DEFENDANT BARRETT: -- what he's talking about.

16 THE COURT: Have you had a chance to discuss it with  
17 your attorney, Mr. Roth?

18 DEFENDANT BARRETT: Discuss No. 4, so I don't know  
19 it's the same stuff.

20 THE COURT: Well, I mean it's been represented to me  
21 that there's really no change other than it adds Mr. Douglas.  
22 But this is the new charging instrument; so this is the one I  
23 guess we're going forward on.

24 So would you like me to read it out loud or do you  
25 waive the public reading of the document?

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1 DEFENDANT BARRETT: I don't need you to read it.

2 THE COURT: Okay. So you waive the public reading.

3 And how do you plead?

4 DEFENDANT BARRETT: Waive nothing. But I don't need  
5 you to read it. I don't waive anything, but I don't need you  
6 to read it.

7 MR. ROTH: We're just waiving him reading it out loud.

8 DEFENDANT BARRETT: I don't waive anything.

9 THE COURT: I can read it, if you'd like. Do you want  
10 me to read it?

11 DEFENDANT BARRETT: I don't need you to read it  
12 either.

13 THE COURT: I'll deem that to be a waiver of the  
14 public reading.

15 But, in any event, how do you plead, guilty or not  
16 guilty?

17 DEFENDANT BARRETT: Nonassumption. I plead  
18 nonassumption.

19 THE COURT: Nonassumption?

20 DEFENDANT BARRETT: Nonassumption, yeah.

21 THE COURT: I'll take that as a not-guilty plea.

22 Mr. Todd, have you seen a copy of the indictment --  
23 the superseding indictment?

24 DEFENDANT TODD: No, your Honor.

25 THE COURT: No?



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1 MS. McKENZIE: Your Honor, I can hand him a copy, if  
2 he wants to. But I spoke to him about it; it confirmed what  
3 the prosecution said to the Court.

4 THE COURT: I think we should give him a copy.

5 Mr. Todd, you're entitled to a copy; you should take a  
6 look at it. And then while you're looking at it, perhaps I'll  
7 talk to Mr. Douglas.

8 Mr. Douglas, have you had a chance to look at the  
9 indictment?

10 DEFENDANT DOUGLAS: Yes.

11 THE COURT: Have you discussed it before with  
12 Mr. Giampa; is that correct?

13 DEFENDANT DOUGLAS: Yes.

14 THE COURT: Would you like me to read it out loud here  
15 in court, or do you waive the public reading of the indictment?

16 DEFENDANT DOUGLAS: That's all right. You could waive  
17 it.

18 THE COURT: You waive it.

19 DEFENDANT DOUGLAS: Yes.

20 THE COURT: All right. And how do you plead to the  
21 charges in the superseding indictment, guilty or not guilty?

22 DEFENDANT DOUGLAS: Not guilty.

23 THE COURT: Not guilty.

24 And then, Mr. Todd, let me know when you're ready.  
25 You can take as much time as you need.

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1 Are you ready?

2 Okay. So now you've got the superseding indictment,  
3 which is S2 12 CR 45. You discussed it with Mr. --

4 MS. McKENZIE: Ms. McKenzie, your Honor.

5 THE COURT: Ms. McKenzie. I apologize, Ms. McKenzie.  
6 You've discussed it with her?

7 DEFENDANT DOUGLAS: We spoke about it earlier.

8 THE COURT: All right. And do you waive the public  
9 reading, or would you like me to read it out loud?

10 DEFENDANT TODD: Waive it. your Honor.

11 THE COURT: And how do you plead, guilty or not  
12 guilty?

13 DEFENDANT TODD: Not guilty.

14 THE COURT: Not guilty. Okay.

15 So that's all the arraignment is really, it's just  
16 making sure that we have your plea, and that you've had a  
17 chance to familiarize yourself with the charges.

18 For all but Mr. Douglas, this is just the same charges  
19 as before.

20 Mr. Douglas, it's the first time you're appearing on  
21 this indictment or any indictment that you're aware of, so I'll  
22 tell you where we're at, okay.

23 We have a trial scheduled for March 4th. And so  
24 Mr. Giampa, I assume that's pretty short turnaround for you at  
25 a trial.

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1 MR. GIAMPA: Your Honor, I will not be ready for trial  
2 before March 4th.

3 THE COURT: Okay.

4 MR. GIAMPA: I don't know if you want me to go into  
5 it, but I have an extensive trial schedule between now and  
6 June.

7 THE COURT: Okay. So, well, I mean I think I'm  
8 inclined to go forward with the March 4th trial. Mr. Douglas  
9 wasn't apprehended until yesterday. I think the other  
10 defendants have been in jail for over a year. So I think we  
11 should be going forward.

12 Does anybody disagree with that?

13 MR. GIAMPA: Well, I would, your Honor. I don't have  
14 enough time to prepare.

15 THE COURT: No, no. I'm saying everybody but you.

16 MR. GIAMPA: Oh, oh, oh.

17 THE COURT: I'm saying that we go forward with the  
18 three defendants who are here, who were previously named, who  
19 have been in custody for some time, because they've been  
20 waiting for this trial for some time. So I'm inclined to go  
21 forward. And then if we have to try it again, we try it again.  
22 That's just the way it goes sometimes when people are arrested  
23 late in the game.

24 So does anybody disagree with that?

25 Ms. Masella.

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1 MS. MASELLA: Your Honor, and we don't do this  
2 lightly, but we do want to oppose a severance of the defendants  
3 in this case because of the nature of the case, the nature of  
4 the witnesses, and the nature of the evidence that we expect to  
5 present.

6 As may be clear from the indictment, Mr. Douglas is a  
7 core member of this conspiracy. He's named in at least six of  
8 the 13 overt acts, and there are several other incidents that  
9 we've provided notice of that he is also involved in.

10 A large majority of the evidence at the trial of Mr.  
11 Todd, Mr. Dore, and Mr. Barrett will be -- it will be necessary  
12 to duplicate much of that evidence at a second trial.

13 And I do just want to emphasize that, unlike some  
14 other types of cases, where many of the witnesses are  
15 cooperating witnesses or law enforcement witnesses which are  
16 somewhat under the control of the government, we do have many,  
17 many victim witnesses who will be testifying in this case. And  
18 it's a hardship for them, both sort of emotionally in the sense  
19 that they are reluctant to testify, they face the violence in  
20 this case, and they're hesitant and reluctant, and they are  
21 also, for the most part, individual business owners for whom  
22 taking time out of their business is also a financial hardship  
23 to come down and testify.

24 So I understand that the other defendants are ready  
25 for trial. We are getting ready for trial; we've done all of

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1 our pretrial submissions and witness lists and exhibit lists,  
2 and we're all ready to go. But Mr. Douglas has been indicted  
3 in this case for over seven months. And we were making -- with  
4 the ATF and the marshals service we're making what we  
5 considered rather vigorous efforts to find him. And it was  
6 just sort of happenstance that it happened 10 or 11 days before  
7 the trial date in this case.

8 THE COURT: I'm not blaming anybody, but it does seem  
9 to me at this point we've had defendants who have been in  
10 custody since last January, right?

11 MS. MASELLA: That's correct, your Honor.

12 And I can't speak to what their position is now, but  
13 in the past several weeks, there have been -- two of the three  
14 trial defendants have made requests for adjournments based on  
15 their own trial counsel's schedules.

16 THE COURT: I know. But I've denied those. I mean  
17 those were weeks ago that they made them.

18 Let me hear from the lawyers who are here.

19 Mr. Roth? Ms. McKenzie?

20 MR. ROTH: Your Honor, I can't speak for Mr. Dore, but  
21 on behalf of Mr. Barrett, I think we'd like to proceed.

22 And I would also present the fact that, as I  
23 understand it, there were six charged individuals in this  
24 indictment. From my reading of the discovery and the  
25 disclosures to date, there's another six or so members of the

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1 conspiracy. I don't know the status of all those people, but  
2 if some haven't been arrested, I can see a situation where this  
3 would keep on going on and on and on, and Mr. Barrett would  
4 never get his day in court. So we're prepared to go forward.

5 THE COURT: All right. Ms. McKenzie?

6 MS. McKENZIE: Your Honor, on behalf of Steven Brill,  
7 he will consent to an application for a trial after May 17th.  
8 But he takes no position on whether or not there's an  
9 adjournment. He's ready for March 4th.

10 THE COURT: I'm going to deny your request for an  
11 adjournment. I think we have to try this case. These  
12 gentlemen were waiting a long time. And I understand it's an  
13 inconvenience, and it's nobody's fault really; it's just the  
14 way it happened. But I don't think we can ask them to wait  
15 until May or June or July. I just think that that's asking too  
16 much.

17 So we'll go forward on May 4th -- March 4th, excuse  
18 me. We'll try the case here. We're going to have a final  
19 pretrial conference next week, at which we'll cover the motions  
20 *in limine*, and we'll discuss any other pretrial issues that the  
21 parties raise between now and then. And then we'll start  
22 picking a jury on Monday, March 4th. Okay?

23 Anything else, Mr. Roth? Do you have a question?

24 We'll set a schedule for you now, Mr. Giampa.

25 MR. GIAMPA: Okay. So just so I'm straight, my

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1 client, Shea Douglas, has now been severed from --

2 THE COURT: That's right. I'm denying a motion for an  
3 adjournment. I'm severing Mr. Douglas from the other  
4 defendants, in light of the fact that there's no way that he or  
5 you could be prepared for trial on March 4th. But the other  
6 defendants have been waiting for quite some time, and I just  
7 think, given those circumstances, we can't go forward against  
8 everybody, and we can't adjourn. So I think the best thing to  
9 do then is to sever Mr. Douglas.

10 Did you have a question Mr. Todd? Do you want to  
11 confer with your lawyer first?

12 DEFENDANT TODD: Yes, please.

13 THE COURT: I would advise you to do that. I think  
14 that's best. If you want to speak, I'll give you that  
15 opportunity.

16 MS. McKENZIE: That's fine, your Honor.

17 THE COURT: You can chat with Mr. Todd for a moment.

18 (Pause)

19 MS. McKENZIE: Your Honor, my client wants to bring up  
20 a CD of documents that was sent to an individual in his unit  
21 that has something to do with this case. I'm not sure what the  
22 CD contains, but it was sent to Jermaine --

23 DEFENDANT TODD: Jermaine Chambers.

24 MS. McKENZIE: Jermaine Chambers.

25 MR. ROTH: Judge, apparently -- and I mentioned this

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1 to the government earlier today -- Mr. Barrett, who's at the  
2 MCC, not MDC, where the other gentleman is, he told me that an  
3 individual was in the possession of one of the CDs that was  
4 produced in discovery, the one that contained videos of the  
5 defendants' post-arrest when they were in the holding cell of  
6 ATF.

7 And apparently I learned today, too, that his  
8 codefendant said in MDC, somebody else apparently had that. I  
9 brought that to the government's attention. They said they  
10 were not aware of any of those circumstances or how that may  
11 have occurred.

12 THE COURT: Is there a request associated with that or  
13 just you wanted to bring it to my attention?

14 DEFENDANT TODD: Bring it to your attention, your  
15 Honor.

16 THE COURT: Okay. All right.

17 Well, I don't know the circumstances of if; I'm not  
18 sure how it happened. I think this is something the government  
19 should inquire into to see just what's going on.

20 But if a particular defendant shares their material  
21 with other people, I guess that -- was there any sort of  
22 confidentiality provisions with respect to discovery in this  
23 case?

24 MS. McKENZIE: Your Honor, if I could talk to my  
25 client. I'm not sure what's in the CD, if he even saw the CD.



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1 Can I just ask him?

2 THE COURT: Yeah. But it's been represented that's a  
3 CD that was produced by the government in discovery in this  
4 case.

5 MS. McKENZIE: That's my understanding.

6 THE COURT: And it ended up in the hands of somebody  
7 who's not in this case, right?

8 (Pause)

9 MS. McKENZIE: Your Honor, according to my client, it  
10 is confidential information that has been given to  
11 Mr. Chambers. And he has an issue with it, especially since it  
12 contains information pertaining to his case.

13 THE COURT: I guess the issue is -- there's nothing  
14 that prevents any defendant, I don't think, from sharing the  
15 discovery materials with other people if they want to. I don't  
16 know that that's what happened here, but that's -- is there a  
17 confidentiality order that was entered into among the  
18 government and the defendants in this case?

19 MS. McKENZIE: From my client, what I'm gathering is  
20 that it was given by prosecution, maybe not the prosecutors  
21 here today, but someone on Mr. Chambers' case, given to his  
22 attorney, and then his attorney gave it to Mr. Chambers.

23 THE COURT: All right.

24 And does the government have any information to add on  
25 this? I don't know who Mr. Chambers is.

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1 MS. MASELLA: We don't know either, your Honor. I  
2 can't imagine that would have happened. There is no particular  
3 confidentiality agreement in this case. Discovery has been  
4 provided to defense counsel and, in some cases, also placed in  
5 the jails for the defendants to review, but not sent to other  
6 defendants who are not part of the case.

7 THE COURT: I have both Mr. Barrett and Mr. Dore  
8 raising their hands as though they want to speak.

9 Do you want to speak yourself?

10 DEFENDANT BARRETT: I said I seen the video myself.  
11 Another inmate told me about it, and he said his lawyers going  
12 to send it to him, Lawrence Schoebach, or whoever his lawyer  
13 is. And he showed it to me when he received the discovery.  
14 And all it was was in the cell block or whatever. Everything  
15 that was going on that morning, that's what's on it.

16 THE COURT: Okay. I mean, look, I don't know how it  
17 fell into the hands of people who are not in this case. But,  
18 again, these are not confidential materials, so I'm not sure  
19 that it violates anybody's rights by having them out being  
20 shared. If there's something about it that undermines the  
21 safety or undermines the privacy of the defendants, then that's  
22 worth exploring. But I don't know that that's the case.

23 Mr. Barrett?

24 DEFENDANT BARRETT: Yes. I mean if we ever have  
25 nothing to do with their case or situation, then how would they

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1 end up with our discovery?

2 THE COURT: I don't know. I think there's any number  
3 of ways it could happen. It could be that they were in the law  
4 library and they were mistakenly given to someone who wasn't in  
5 the case. It could be that someone who's in the case decided  
6 to share with someone else. It could be -- I don't know. It  
7 could be any number of things.

8 Yeah.

9 DEFENDANT BARRETT: That was obviously provided by the  
10 prosecutor or the AUSA --

11 THE COURT: Why is it obvious?

12 DEFENDANT BARRETT: -- to their attorneys.

13 THE COURT: But why do you say that?

14 DEFENDANT BARRETT: Their attorneys sent it to them.

15 THE COURT: But why do you say that's obvious? What  
16 information do you have about that?

17 DEFENDANT BARRETT: Because their attorneys sent it to  
18 them. So somebody had to produce it to their attorney for the  
19 attorney to send it to the defendants.

20 THE COURT: Well, attorneys could get all of this kind  
21 of thing in any number of ways. So I don't know if -- look, if  
22 any of the lawyers or the government lawyers want to inquire on  
23 this and figure out what happened, if anybody is asking me to  
24 do something about it, I'm all ears; but, otherwise, I'm not  
25 sure what -- it's a piece of information that I was not aware

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1 of. But I don't know what anyone is asking me to do about it.

2 MS. McKENZIE: Your Honor, since my client brought it  
3 up, do you mind if I talk to Mr. Brill when he gets back with  
4 regard to this, and maybe contact chambers and the prosecutors  
5 so we could actually resolve this, whatever the issue is?

6 THE COURT: That's fine. Look, I think it's worth  
7 knowing what happened. If the law library or somebody else is  
8 handing out materials to people who are not involved in a case,  
9 that would be -- sounds improper. I'm not sure if it's a  
10 violation of anybody's rights, but it doesn't sound like it's  
11 the way it ought to go.

12 I don't know what's on the video that it compromises  
13 anybody's safety or privacy interests, but that's probably  
14 worth knowing, as well. And if it was a situation where the  
15 prosecutors sent these materials to somebody who's not in the  
16 case, then I guess that should be explained. But I don't think  
17 it's going to affect the trial. The fact is the trial is going  
18 to be going forward on the 4th of March.

19 So any lawyer who wants to follow up on this is  
20 welcome to do that; I'm not saying that you can't, I just am  
21 not sure what anybody would be asking me to do at this point..

22 MR. ROTH: Judge, on another issue, I've raised with  
23 the government today -- and hopefully we can work it out -- I  
24 made a request for any *Brady* material specifically surrounding  
25 the circumstances of I'll say the evolution of Singh's plea and

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1 his situation in this conspiracy.

2 Singh was named in the overt acts and in the trial  
3 instances of not just the one which they did disclose in terms  
4 of *Brady* where there was a mis-ID or a wrong ID of him  
5 participating in the so-called Newbold stabbing incident, but  
6 he was named in the disclosures to us as being a participant in  
7 several other acts of this conspiracy.

8 So I think the holding on the government to tell us  
9 why this source of information, whichever it is one, or more  
10 sources, now they believe them in terms of who was members of  
11 this conspiracy, because it's central to our clients here who  
12 are charged as members of the conspiracy. They are saying  
13 Singh was a central member of this conspiracy.

14 THE COURT: Right.

15 MR. ROTH: He's clearly not viewed that way, and  
16 he's --

17 THE COURT: I don't know if he's not viewed that way  
18 or not. I know he pled to something that didn't involve any of  
19 the counts in the indictment.

20 MR. ROTH: Right. And he was named not only in the  
21 original indictment, but in the additional so-called trial  
22 incidences when we got 30-odd whatever trial instances, and  
23 perhaps six other instances where he was participating in acts  
24 of robberies and etc.

25 And now, whatever that source is who was central and

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1 was able to say Singh was not at the Newbold property, somebody  
2 obviously who has information, and somebody else was supplying  
3 information about Singh and possibly Mr. Barrett and others  
4 that was faulty information or false information.

5 THE COURT: I think what you're asking for then is to  
6 the extent that there is a witness whose information or  
7 testimony has been impeached by new witnesses, impeachment  
8 which led to the plea deal that Mr. Singh got, that material  
9 should be made available to you to the extent that such a  
10 witness is going to be relying on a trial or even beyond that.

11 MR. ROTH: I don't know how they are going to prove up  
12 their case, Judge.

13 THE COURT: Either do I.

14 MR. ROTH: But I think that that's a fair statement.  
15 I would put it in both categories.

16 THE COURT: Okay. Government, I mean you understand  
17 you have *Brady* obligations; you also have an obligation to  
18 produce impeachment material, *Giglio* and 3500 material. They  
19 are not all the same, but there's certain pieces of information  
20 that could fall under the multiple headers; it could be *Brady*  
21 and *Giglio* and 3500; it could be a number of things.

22 So what do you say to Mr. Roth on this point?

23 MS. MASELLA: Your Honor, we are, of course, aware of  
24 all those different obligations. We've already produced to all  
25 defense counsel the *Brady* material which was related to the

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1 witness identification.

2 THE COURT: I don't think I've seen that, have I? I  
3 mean if there was a letter related to *Brady*, it wasn't sent to  
4 me. You made some representation very generally that some  
5 witness came forward and contradicted or undermined another  
6 witness with respect to Mr. Singh, but I don't know anything  
7 more than that.

8 MS. MASELLA: That's correct, your Honor. The  
9 disclosure was not sent to the Court; it was sent to all  
10 counsel for defendants. First to counsel for Mr. Singh, and  
11 then to the other defendants in the case.

12 MR. ROTH: But that was the extent of the disclosure.

13 THE COURT: What was the extent?

14 MR. ROTH: Just a few, some witness said.

15 THE COURT: Well, was it the disclosure that you may  
16 want to talk to so-and-so witness or no?

17 MR. ROTH: I would certainly like the opportunity --

18 THE COURT: No, is that what the disclosure said?

19 MR. ROTH: No.

20 THE COURT: You got some letter from the government.

21 MR. ROTH: No, there was no offer, no suggestion. I'm  
22 sorry, I didn't --

23 THE COURT: No, I'm just confused.

24 There was a disclosure letter that just says what? We  
25 changed our mind with respect to somebody? That's not *Brady*

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1 disclosure.

2 MS. MASELLA: No, that a witness who recently came to  
3 our attention called into question the identification made of  
4 Mr. Singh by the victim of the Newbold incident. It also  
5 invited further questions from counsel with respect to that  
6 information. If Mr. Roth wants to ask me a particular question  
7 about the name of the victim witness or something else, I would  
8 be happy to have those discussions with him.

9 THE COURT: So why don't you do that, Mr. Roth. And  
10 then if you want to make a motion, make a motion.

11 MR. ROTH: It's obviously not the victim witness, it's  
12 the person who's giving them information who said Singh wasn't  
13 there.

14 THE COURT: Right. I understand where you're going  
15 with it. I just think --

16 MR. ROTH: We'll try to work it out.

17 THE COURT: I mean I would take Ms. Masella up on her  
18 offer. And if you're not satisfied with what she's providing,  
19 then you can make a motion for a Brady disclosure beyond what  
20 you've got. Okay. And we can take this up, if need be, at our  
21 conference next week.

22 Did you have a question?

23 MR. ROTH: I'm sorry, I forgot. Yes, I apologize.

24 Mr. Dore told me that he's just recently been  
25 transferred over from MDC to MCC, which is the custom pretrial.



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1 And he's apparently in segregation, the box, which, from my  
2 knowledge, is if they don't have a bed right away, he gets  
3 stuck in the box.

4 But the problem is, aside from the fact of his  
5 confinement conditions, he doesn't have his legal work with  
6 him. So I don't know that there's a prohibition, that I can't  
7 speak to a, prohibition of having legal work in segregation.

8 THE COURT: I don't either. And the trial is not for  
9 another ten days or so. So it might be worth the government  
10 just inquiring when they're going to have a bed or whether it's  
11 something more than that, and at least let the Bureau of  
12 Prisons know that he's missing his legal work. And, Mr. Roth,  
13 you or Ms. Fontier should do the same.

14 The Bureau of Prisons has to be able to make  
15 arrangements to ensure the safety within the prison, but they  
16 also have to make sure that prisoners are able to access their  
17 legal materials so they can prepare for a trial that's less  
18 than two weeks away. So let's try to resolve that. If you  
19 need the Court to get involved, then let me know. So hopefully  
20 it will take care of itself.

21 It usually is the case though, Mr. Dore, that  
22 sometimes it takes a day or two to get the beds.

23 DEFENDANT DORE: It's been a week.

24 THE COURT: It's been a week?

25 All right. So let's see if we can resolve that or, if

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1 need be, then let's get Mr. Dore back to the MDC where he might  
2 be able to better prepare for trial rather than at the MCC.

3 So can I ask the government to follow up on that?

4 MS. MASELLA: I will inquire, your Honor.

5 THE COURT: Good. Thank you.

6 All right. Anything else we should cover?

7 MR. ROTH: Judge, so I assume you'll rule on the  
8 pretrial motions at our last --

9 THE COURT: Right. At the conference I'll rule on the  
10 motions.

11 MS. MASELLA: Your Honor, just with respect to a  
12 schedule for Mr. Douglas.

13 THE COURT: We're going to do that now.

14 I was going to excuse the other defendants, unless  
15 they want to stay while we set a schedule for Mr. Douglas. I  
16 don't feel strongly about it. Do you want to stay?

17 MR. ROTH: I don't have to stay.

18 THE COURT: Okay. So, marshals, is that okay if we  
19 excuse the other defendants and their lawyers, and we just take  
20 a minute, and then we'll proceed with Mr. Douglas, just to set  
21 a schedule for discovery and motions.

22 Okay? Thank you.

23 (Pause)

24 MS. McKENZIE: Your Honor, we don't have to stay.

25 THE COURT: You're welcome to stay, but you don't have

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1 to stay.

2 MS. McKENZIE: Thanks very much.

3 THE COURT: Thanks very much, Ms. McKenzie.

4 Okay. Mr. Roth, you're going to bolt? You're going  
5 to leave, right?

6 MR. ROTH: I am going to leave, if I can find my  
7 briefcase.

8 THE COURT: All right.

9 Let's talk about a schedule for Mr. Douglas.

10 So, government, how long does it take to produce  
11 discovery to Mr. Giampa and Mr. Douglas?

12 MS. MASELLA: We can produce it by Friday, your Honor.

13 THE COURT: By Friday. Okay. Good.

14 And then, Mr. Giampa, how long do you think it's going  
15 to take you to review those materials with your client and then  
16 decide what motions, if any, you want to make?

17 MR. GIAMPA: I'm not sure how extensive the discovery  
18 is, your Honor. But from just speaking with co-counsel, it  
19 appears as though there's something like 100 witnesses in this  
20 case.

21 THE COURT: I don't think that's going to get -- I  
22 mean most of that's not getting produced in discovery.

23 Are there tapes or anything like that?

24 MS. MASELLA: No, your Honor.

25 I can summarize briefly what the discovery consists

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1 of.

2 There's a large volume of phone records, including  
3 call detail records and cell site information. There is  
4 information related to various incidents, such as police  
5 reports, evidence vouchers, testing for DNA, and fingerprints,  
6 things of that nature, crime scene photographs and sketches,  
7 photographs of various locations, witness identification,  
8 procedures where those were done. There were no wiretaps,  
9 there were no extensive --

10 THE COURT: Were there any lineups or photo arrays of  
11 Mr. Douglas?

12 MS. MASELLA: Involving Mr. Douglas, I do not believe  
13 so. He was not asked -- he was not interrogated, and he did  
14 not make a post-arrest statement. I don't believe there were  
15 any physical searches of Mr. Douglas at the time of his arrest.

16 THE COURT: So it doesn't sound like it's terribly  
17 voluminous, Mr. Giampa, in the sense that there is no wiretaps  
18 and there's no lineups, no post-arrest statements. The sorts  
19 of things that would prompt motions are not here. There might  
20 be other motions that you think are appropriate, but it sounds  
21 like it's not -- it's not too voluminous or not the sort of  
22 thing that's going to have you hold up for two months looking  
23 at this stuff.

24 MR. GIAMPA: I understand, your Honor.

25 And, again, just being brought to the case last night,

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1 it's very difficult to say, but I mean today's the 20th. I  
2 mean between 30 and 45 days.

3 THE COURT: Okay. I think that's fair.

4 So let's get you back here in the early part of April,  
5 all right?

6 MR. GIAMPA: Okay. Just to let you know, I am  
7 starting a trial in this courthouse on April 7th.

8 THE COURT: April 7th. That's before whom?

9 MR. GIAMPA: Your Honor, it's very odd. It was before  
10 Judge Seibel in White Plains. And she just kicked it back to  
11 the calendar part, and it was reassigned to this courthouse,  
12 but the name escapes me, the judge escapes me. Let me just put  
13 it this way: It was originally on for April 22nd, and the  
14 judge who has since taken it has accelerated it to April 7th.

15 THE COURT: The 7th is a Sunday, so it must be a  
16 different day.

17 MR. GIAMPA: Maybe it's the 8th then.

18 THE COURT: Why don't we schedule something here then  
19 the week before.

20 MR. GIAMPA: Okay.

21 THE COURT: How about April 3rd, Wednesday, April 3rd,  
22 at 2:30, okay?

23 And at that time you should let me know what motions,  
24 if any, you're contemplating. And if you are planning motions,  
25 then we'll set a briefing schedule for the motions. If you're

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1 not, then we'll set a trial date.

2 MR. GIAMPA: Okay, your Honor. Thank you.

3 Now, just with regards to bail, I am working on a bail  
4 package; I don't have a bail package yet, but I will provide it  
5 to --

6 THE COURT: Okay. And there's no prejudice to seeking  
7 it later. If and when you have a proposal, just let me know  
8 and we'll schedule a conference, and then I'll hear the  
9 argument.

10 MR. GIAMPA: Thank you, your Honor.

11 THE COURT: I won't pre-judge it.

12 In the meantime, Mr. Douglas, you'll remain in custody  
13 pending trial. But, as I said, if you think you have a package  
14 that you want to present to me, I'm happy to hear you, and  
15 we'll make arrangements. All right.

16 MS. MASELLA: Your Honor, the government would request  
17 an exclusion of speedy trial time from now until April 3rd.  
18 It's already been excluded through the trial date in this case,  
19 but for Mr. Douglas we'd like to exclude it through April 3rd  
20 so that he can receive and review the discovery materials and  
21 consider any motions.

22 THE COURT: Yes. And no objection to that,  
23 Mr. Giampa?

24 MR. GIAMPA: No objection, your Honor.

25 THE COURT: Mr. Douglas, let me tell you what that

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1 just meant. Maybe you understand.

2 DEFENDANT DOUGLAS: Speedy trial.

3 THE COURT: Yeah, that's right.

4 I'll tell you just so it's clear.

5 Under the law, you have a right to a speedy trial.

6 DEFENDANT DOUGLAS: Seventy days.

7 THE COURT: Seventy days. You know this stuff.

8 Now, as you probably know, as it's probably been  
9 explained to you, the law allows that 70 days to be extended  
10 for certain reasons, or if you think of it as a clock that's  
11 ticking away with 70 ticks on it, the Court can stop the clock.  
12 And one reason to stop the clock is because you or one of your  
13 codefendants has filed a motion or has requested and received  
14 an exclusion of time under the Speedy Trial Act for a valid  
15 reason.

16 So in this case, trial against the other folks is  
17 going to go forward on March 4th. So I've excluded the time.  
18 The clock is not going to tick between now and March 4th. And  
19 you are covered by that, as well.

20 But, in your case, you are in a very different spot,  
21 so you need to review these discovery materials, this evidence  
22 that we've talked about. Your lawyer needs to look at those  
23 things, discuss them with you, and then decide whether there  
24 are motions to be made.

25 So it seems to me that there's valid reason to keep

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1 the clock stopped from today until April -- what did we say,  
2 April 3rd -- when we come in and talk about what's next. Seems  
3 to me that your interest and the public's interest in a speedy  
4 trial is outweighed by your need to look at these materials,  
5 have your lawyer look at the materials, and decide what you  
6 want to do going forward.

7 So that's what we'll do. I'm going to stop the clock  
8 in the interest of justice. The statute that covers this, you  
9 seem pretty sophisticated, you've obviously been told or done  
10 some research, is Title 18 of the United States Code, Section  
11 3161. I'm sure Mr. Giampa can explain more to you if you like,  
12 but that's just where in the code book you can find it.

13 On April 3rd we'll come together; we'll see what's  
14 what. If at that point you say I want a quick trial, I'll give  
15 you a quick trial, I promise. But if it turns out, well, you  
16 actually want to make some motions, that's another reason to  
17 keep the clock stopped. Once a motion has been filed, the  
18 clock automatically stops, and that's to allow the Court time  
19 to get briefs, hear argument, and resolve the motion.

20 So we'll see where we are on April 3rd. But between  
21 now and then, it sounds like you'll have enough to do, and it's  
22 important stuff. Okay?

23 DEFENDANT DOUGLAS: Thank you, Judge.

24 THE COURT: All right.

25 Anything else, Mr. Giampa?



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1 MR. GIAMPA: No, your Honor.

2 THE COURT: Anything else from the government?

3 MS. MASELLA: No, your Honor. Thank you.

4 THE COURT: All right. Thanks.

5 So I'll see you folks in April. I'll see the  
6 government folks before then.

7 Let me thank the marshals, and let me thank the court  
8 reporter, as well.

9 Mr. Giampa.

10 MR. GIAMPA: Just one other thing. I was just hearing  
11 about a pretrial conference next week.

12 THE COURT: You don't need to be here.

13 MR. GIAMPA: Me and Shea are not going to be needed to  
14 be here.

15 THE COURT: No. If you want to come, you're welcome  
16 to come, but it would seem to me that it probably doesn't make  
17 sense, given where you are in the case.

18 MR. GIAMPA: Okay. Thank you.

19 THE COURT: All right. Thanks a lot.

20 Have a good day.

21 MS. MASELLA: Thank you.

22 \* \* \*